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**FISCAL IMPACT STATEMENT**

**LS 7028**

**BILL NUMBER:** SB 382

**NOTE PREPARED:** Feb 25, 2010

**BILL AMENDED:** Feb 24, 2010

**SUBJECT:** Public-Private Agreements.

**FIRST AUTHOR:** Sen. Charbonneau

**FIRST SPONSOR:** Rep. Pelath

**BILL STATUS:** 2<sup>nd</sup> Reading - 2<sup>nd</sup> House

**FUNDS AFFECTED:** X **GENERAL**  
**DEDICATED**  
**FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) *Illiana Expressway or a Project Connecting Indiana to an Adjacent State*: For purposes of statutes concerning approval of the location of a tollway or the designation of a state highway as a tollway, the bill allows the designation of the Illiana Expressway or a project connecting Indiana with an adjacent state as a tollway (current law prohibits such a designation without legislative authorization).

*Common Construction Wage*: It specifies that the common construction wage statute applies to a project for the Illiana Expressway.

*Public-Private Partnership Agreements*: The bill makes the following changes in the statutes governing public-private partnership (P3) agreements by the Indiana Finance Authority (IFA) or the Indiana Department of Transportation (INDOT):

It authorizes P3 agreements for: (1) a project concerning the Illiana Expressway; and (2) a project that is located in a metropolitan planning area and connects Indiana with Kentucky; that would permit an operator to impose tolls for the operation of motor vehicles (current law prohibits such agreements without legislative authorization).

It requires the preparation of an economic impact study before a request for proposals (RFP) is issued.

It requires a public hearing concerning the study on the proposed project.

After the preliminary selection of an operator, it requires a public hearing on the preliminary selection and the P3 agreement.

It requires various postings and notices before the hearing.

The bill provides that a P3 agreement must:

- (1) require the completion of all environmental analyses required by state and federal law; and
- (2) provide for an expedited method for resolving disputes among or between IFA or INDOT, other parties to the agreement, and units of local government that contain part of a project.

*Eminent Domain Laws:* The bill provides that the eminent domain laws in effect as of January 1, 2010, apply to the use of eminent domain for a project by the IFA or INDOT and to the rights of property owners affected by such a use of eminent domain.

*Ownership:* In the INDOT statute, it provides that the P3 agreement must specify that ownership of the project is to be in the name of the state (this requirement is already in the IFA statute).

*High-Speed Rail Study:* The bill requires INDOT to: (1) conduct and complete, not later than July 1, 2011, a comprehensive study of a route that provides direct high-speed rail passenger service to both South Bend and Fort Wayne; and (2) report to the Joint Study Committee on Mass Transit and Transportation Alternatives on certain matters related to high-speed rail passenger service. It provides that INDOT may not submit an application for the Chicago to Cleveland high-speed passenger rail service corridor until the study is completed.

The bill also provides that the bill applies to P3 agreements entered into after March 14, 2010, and it makes conforming changes.

**Effective Date:** Upon passage.

**Explanation of State Expenditures:** (Revised) *Summary:* The bill could increase costs for projects undertaken as public-private partnerships by requiring a feasibility study and an economic impact study prior to issuing a request for proposal and by requiring an additional public hearing prior to or after completion of the economic impact study and increasing the number of meetings that may take place after the preliminary selection of the operator. Additionally, the bill requires the INDOT to study routes of high-speed rail passenger services and report to the Joint Study Committee on Mass Transit and Transportation Alternatives, which will increase costs for the INDOT.

**Additional Details:**

*Feasibility Study and Economic Impact Study:* A feasibility study is a baseline look at a potential project to determine if the project should go further. A feasibility study was completed for the Illiana project in about one year by an outside consultant with an appropriation for the project of up to \$1 M. The funds for the study came from the INDOT consulting budget.

Most projects require a more in-depth National Environmental Policy Act (NEPA) study as the result of

connecting to an existing highway or by triggering a federal action, such as needing permits from the Army Corps of Engineers to cross waterways. In general, a NEPA study costs about 10% to 25 % of the total project cost. Part of the NEPA study is a community impact assessment, which includes looking at the social and economic impact that the transportation project will have. The federal statute governing this process indicates some items that may be assessed include impact on air, noise, and water pollution; destruction or disruption of man-made and natural resources, aesthetic values, community cohesion, and the availability of public facilities and services; adverse employment effects, and tax and property value losses; injurious displacement of people, businesses, and farms; and disruption of desirable community and regional growth.

The bill requires an economic impact study, including the economic impact on existing commercial and industrial development; potential impact on employment; potential for future development; fiscal impacts on revenues to local units of government, and demands on government services.

To the extent that the preliminary studies required by the bill reduce or eliminate additional analysis to satisfy federally required studies, the costs of these requirements for P3 projects will be minimal or neutral. If a P3 project would not have triggered a federally required study, there may be additional consulting costs for a project.

(Revised) *Public Meetings*: The bill requires an additional public meeting be held in the county in which a proposed P3 project is to take place. For a project undertaken by the IFA, the meeting would take place after the feasibility study and the economic impact study have been completed. For the INDOT, the public meeting must take place before the feasibility study and economic impact study are undertaken. If a project will take place in multiple counties, multiple meetings will be required. Also, current statute requires a meeting after the preliminary selection of the operator. Under the bill, this meeting would take place in the county within which the proposed project is to take place, increasing the number of meetings that will take place if the project takes place in more than one county. Costs incurred for public meetings include public notices in two newspapers of general circulation in the county (for which rates are set in statute) and personnel and consultation costs.

*Eminent Domain*: Any amendments to the current eminent domain statute made after December 31, 2009, would not apply to a P3 project. Any fiscal impact of using the statute in effect on January 1, 2010, would depend on the changes made to the eminent domain statute.

(Revised) *High-Speed Rail Study*: INDOT will complete a study of a route that provides direct high-speed rail service to both South Bend and Fort Wayne before applying to the Track 2-Corridor Programs. [In 2002, a study compared routes going either through South Bend or Fort Wayne, finding the southern route through Fort Wayne was preferred. During the 2009 interim, the Joint Study Committee on Mass Transit and Transportation Alternatives heard testimony from both communities. In October 2009, Indiana submitted application for \$2.8B of American Recovery and Reinvestment Act (ARRA) funds for a high-speed rail project using the southern route.]

**Explanation of State Revenues:** *Illiana Expressway*: Under current law, the Governor, the INDOT, or an operator, without the approval of the General Assembly, may not approve the location of a tollway (a project of the INDOT) or a toll road (a project of the IFA), issue a request for proposal or enter into a public-private agreement, or determine that a highway should become a tollway other than on I-69 between I-64 and Martinsville. Under the bill, the Illiana Expressway, a limited access facility connecting I-65 and an interstate highway in Illinois, would be allowed as a tollway or a tollroad without further legislative approval.

Also, the bill would require an operator or any contractor or subcontractor of the operator who enters into a public-private agreement for construction of the Illiana Expressway as a toll road project to be subject to the common construction wage statute. Under current law, a toll road project is not subject to this statute. There are no data to indicate how this provision may affect the number of operators bidding for the Illiana Expressway project, or the revenue received from the project.

(Revised) *A Project Connecting Indiana to an Adjacent State*: The bill also allows a project connecting Indiana with an adjacent state as a tollway or a tollroad without further legislative approval. If a project is located within a metropolitan planning area, connects Indiana to Kentucky, and is undertaken as a tollway or tollroad project, state statutes concerning the financing of bridges and tunnels and interstate toll bridges would not apply to the project.

*Background - Illiana Expressway*: A preliminary feasibility study was completed for the Illiana Expressway and presented to the General Assembly in July 2009. Among the factors subject to a public opinion survey by the study, a favorable response was given to both tolling and constructing the project as a public-private partnership. This connector would address traffic congestion around the Borman Expressway, I-80/I-94, which is out of available land to expand. The proposal for the Illiana Expressway is for the route to be about 25 to 30 miles long. The bill would allow development of this expressway as a tollway or tollroad.

(Revised) *Ohio River Bridges*: In HEA 1001 of 2009 (ss), the Ohio River Bridge Commission was created to work with lawfully authorized representatives of the Commonwealth of Kentucky to prepare a proposed agreement between Indiana and Kentucky to govern the financing, construction, and maintenance of Ohio River bridge projects. Major Moves construction projects include funding from traditional sources for Corridor 11 - Ohio Bridge Downtown; New Bridges and Approaches over the Ohio River development.

**Explanation of Local Expenditures**: The bill could provide a process for local units of government that incur additional expenses or losses of revenue to be reimbursed for disputed claims under a P3 agreement.

**Explanation of Local Revenues**:

**State Agencies Affected**: INDOT; IFA.

**Local Agencies Affected**:

**Information Sources**: <http://www.in.gov/legislative/igareports/agency/reports/INDOT14.pdf>; Chris Kiefer, INDOT, January 28, 2010; <http://www.environment.fhwa.dot.gov/projdev/tdmcia.asp>; [http://www.ciatrans.net/cia\\_moreinfo.html#1](http://www.ciatrans.net/cia_moreinfo.html#1); <http://dotmaps.indot.in.gov/apps/majormoves/majornew.htm>; <http://www.in.gov/legislative/interim/committee/minutes/MTTACAR.pdf>.

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